

## Office of the Secretary, Interior

## § 4.1601

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the Board.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the Board grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

### § 4.1393 Status of decision pending administrative review.

43 CFR 4.21(a) applies to determinations of the Office of Surface Mining under 30 U.S.C. 1272(e).

### § 4.1394 Burden of proof.

(a) If the person who requested the determination is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the person who requested the determination shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the person who requested the determination does or does not have valid existing rights.

[67 FR 61512, Oct. 1, 2002]

## Subpart M—Special Procedural Rules Applicable to Appeals of Decisions Made Under OMB Circular A-76

AUTHORITY: 5 U.S.C. 301.

SOURCE: 45 FR 75213, Nov. 14, 1980. Redesignated at 52 FR 39525, Oct. 22, 1987.

### § 4.1600 Purpose and nature of the appeal process.

(a) This appeals procedure embodies an informal administrative review of agency decisions made under OMB Circular A-76, and is intended to assure that such decisions are fair, equitable, and in compliance with the provisions of the Circular. This procedure provides affected parties an opportunity to request that such decisions be objectively reviewed by a party independent of the A-76 decision process.

(b) This appeals procedure is administrative rather than judicial in nature, and does not provide for a judicial review or for further levels of appeal. The decisions of the appeals official are final.

(c) This procedure is intended to protect the rights of all affected parties and, therefore, neither the procedure nor agency determinations may be subject to negotiation, arbitration, or agreements with any one of the parties.

### § 4.1601 Basis for appeal.

(a) An appeal may be based only on a specific alleged material deviation (or deviations) by the agency from the provisions of OMB Circular A-76 or Supplement No. 1 thereto, the "Cost Comparison Handbook." Appeals may not be based on other factors, such as the economic impact of the agency's decision on a community, or other socioeconomic issues.

(b) This appeals procedure shall be used only to resolve questions of the determination between contract and in-house performance of a commercial or industrial type requirement, and shall not apply to questions concerning